

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Plaintiff,

v.

SCOTT ALAN CARMITCHEL,

Defendant.

Case No. 2:14-cr-00261-RFB-GWF

**ORDER**

This case is before the Court on Defendant Scott Alan Carmitchel's Sealed Emergency Motion to Stay the Bureau of Prisons' Administration of Involuntary Medication. ECF No. 41. Carmitchel is currently hospitalized in the Mental Health Unit of the Federal Medical Center in Butner, North Carolina ("FMC Butner") in accordance with an Order of this Court pursuant to 18 U.S.C. § 4241(d). According to Carmitchel's motion, the Bureau of Prisons (BOP) determined on July 9, 2015 that Carmitchel should be involuntarily medicated pursuant to Washington v. Harper, 494 U.S. 210 (1990), because he presents a danger to others and because psychiatric medication is necessary to treat his condition and is the least restrictive means available to do so. The Court grants a temporary stay of the involuntary medication of Carmitchel until his counsel receives the full record of the Harper proceeding and appeal conducted by the BOP, and sets a hearing in this matter to determine whether Carmitchel seeks to challenge that proceeding.

Individuals possess "a significant liberty interest in avoiding the unwanted administration of antipsychotic drugs under the Due Process Clause of the Fourteenth Amendment." Harper, 494 U.S. at 221-22; see also United States v. Loughner, 672 F.3d 731, 752 (9th Cir. 2012) (applying Harper to pretrial detainees). "This interest stems from both the drugs' intended mind-altering effects and from their serious, even fatal, side effects . . . ." Loughner, 672 F.3d at 744-

1 45. Given the significance of the interest at stake for Carmitchel in this case, the Court finds it  
2 necessary to temporarily stay the BOP's involuntary administration of medication to Carmitchel  
3 until his counsel has the opportunity to review the record of the Harper proceedings. As  
4 Carmitchel may be entitled to some judicial review of the proceedings, he is necessarily entitled  
5 to the record of those proceedings to determine whether the procedural safeguards he received  
6 comported with Harper's requirements, and therefore whether to seek judicial review. See  
7 Harper, 494 U.S. at 228 (due process requires that the inmate be given adequate procedural  
8 protections "to ensure that the decision to medicate [him] against his will is neither arbitrary nor  
9 erroneous . . ."); Loughner, 672 F.3d at 757 (where medical professionals have determined that  
10 involuntary medication is appropriate pursuant to a Harper dangerousness hearing, that decision  
11 is owed deference; however, the court that authorized commitment in the first place may review  
12 the decision for arbitrariness).

13 Therefore,

14 **IT IS ORDERED** that the Bureau of Prisons' involuntary administration of medication  
15 to Defendant Scott Alan Carmitchel based upon its decision pursuant to Washington v. Harper is  
16 STAYED pending further order of this Court. This Order does not preclude Bureau of Prisons  
17 staff from taking other measures to maintain the safety of other inmates, FMC Butner staff and  
18 Carmitchel himself.

19 **IT IS FURTHER ORDERED** that the Bureau of Prisons shall produce all  
20 documentation relating to the proceedings conducted pursuant to Washington v. Harper  
21 regarding Defendant Scott Alan Carmitchel, including all evidence considered by the BOP,  
22 findings, and hearing transcript(s), by **5:00 PM Pacific Standard Time on Friday, July 17,**  
23 **2015**. The documentation shall be produced to (1) the office of the Federal Public Defender, attn:  
24 Rachel M. Korenblat or her designee, and (2) the United States Attorney's Office, attn: Robert  
25 Knief or his designee. The Bureau of Prisons shall also produce a copy of the documentation to  
26 the Court **under seal** by the same date and time.

27 **IT IS FURTHER ORDERED** that the parties shall each submit briefing to the Court by  
28 **Tuesday, July 21, 2015** addressing the adequacy of the process received by Defendant Scott

1 Alan Carmitchel with regard to the Washington v. Harper proceedings conducted by the Bureau  
2 of Prisons.

3 **IT IS FURTHER ORDERED** that a status hearing is set for **Wednesday, July 22, 2015**  
4 **at 1:00 PM in LV Courtroom 7C**. The Court will issue a further order at that time regarding the  
5 potential involuntary medication of Carmitchel.

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7 DATED: July 15, 2015.

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**RICHARD F. BOULWARE, II**  
**United States District Judge**